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DIVISION OF OCCUPATIONAL  
& PROFESSIONAL LICENSING

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSE OF	)	<b>SURRENDER</b>
<b>BRIAN MARC DIFRANCESCO</b>	)	<b>STIPULATION AND ORDER</b>
TO PRACTICE AS A	)	
PHARMACY TECHNICIAN	)	CASE NO DOPL 2011- 5
IN THE STATE OF UTAH	)	

**BRIAN MARC DIFRANCESCO** ("Respondent") and the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah ("Division") stipulate and agree as follows

1 Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action

2 Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily

3 Respondent understands that Respondent has the right to be represented by counsel in this matter and Respondent's signature below signifies that Respondent has either consulted with an attorney or Respondent waives Respondent's right to counsel in this matter

4 Respondent understands that Respondent is entitled to a hearing before the State of Utah's Board of Pharmacy ("Board"), or other Division Presiding Officer, at which time Respondent may present evidence on Respondent's own behalf, call witnesses, and confront adverse witnesses Respondent understands that by signing this document Respondent hereby waives the right to a hearing, the right to present evidence on Respondent's own behalf, the right to call witnesses, the right to confront adverse witnesses, and any other rights to which Respondent may be entitled in connection with said hearing Respondent understands that by signing this document Respondent hereby knowingly and intelligently waives the right to all administrative and judicial review as set forth in Utah Code Ann §§ 63G-4-301 through 63G-4-405, and Utah Administrative Code R151-46b-12 through R151-46b-15 Respondent and the Division hereby express their intent that this matter be resolved expeditiously through stipulation as contemplated in Utah Code Ann § 63G-4-102(4)

5 Respondent waives the right to the issuance of a Petition and a Notice of Agency Action in this matter

6 Respondent acknowledges that this Stipulation and Order, if adopted by the Director of the Division, will be classified as a public document The Division may release this Stipulation and Order, and will release other information about this disciplinary action against Respondent's licenses, to other persons and entities

7 Respondent admits the following facts are true

- a On or about September 14, 2010 Respondent was first licensed to practice as a pharmacy technician in the State of Utah
- b On or about December 29, 2010 Respondent was questioned by loss prevention at his place of employment in Utah where Respondent worked as a pharmacy technician Respondent acknowledged to loss prevention personnel that he had diverted some controlled substances from his employer and that the value of the controlled substances diverted totaled approximately \$1,986.56 Respondent provided a written statement acknowledging that while working as a pharmacy technician he had diverted controlled substances
- c On or about March 21, 2011, Respondent's employer, which is licensed with the Division as a pharmacy, submitted a DEA 106 form detailing the following controlled substance losses due to employee pilferage during the past four months
  - i Hydrocodone APAP 10-500 mg #424 tablets,
  - ii Oxycodone APAP 5-325 mg #1,238 tablets;
  - iii Oxycodone APAP 7.5-500 mg #19 tablets,
  - iv Oxycodone APAP 10-325 mg #1,568 tablets,
  - v Oxycodone APAP 7.5-325 mg #1,656,
  - vi Oxycodone HCL 10 mg #21 tablets,
  - vii Oxycodone HCL 15 mg #298 tablets,
  - viii Oxycodone HCL 30 mg #669 tablets, and
  - ix Oxycontin 40 mg #222 tablets
- d On or about February 7, 2011, Respondent was charged with one count of possession or use of a controlled substance, a 3rd degree felony, and one count of theft, a Class B misdemeanor, in the Utah Third District Court, West Jordan
- e Respondent has engaged in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct might reasonably be considered to impair Respondent's ability to safely practice as a pharmacy technician
- f Respondent desires to surrender Respondent's license to practice as a pharmacy technician in the State of Utah as well as all residual rights pertaining to said license

8 Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a) and (e), and unlawful conduct as defined in Utah Code Ann § 58-17b-501(6)(e) and § 58-37-8(2)(a)(1), and that said conduct justifies disciplinary action against Respondent's license pursuant to Utah Code Ann § 58-1-401(2)(a) Respondent hereby surrenders Respondent's license to practice as a pharmacy technician in the State of Utah along with all residual rights pertaining to said license Respondent agrees that the issuance of the Order in this matter constitutes disciplinary action by the Division pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann § 58-1-401(2)(a) Respondent agrees not to reapply for licensure to practice pharmacy or to dispense controlled substances in the State of Utah until (1) a period of five years from the date the Division Director signs this Stipulation and Order has passed, and (2) only after Respondent has submitted documentation to the Division, including drug analysis test results, showing that Respondent has not used illegal drugs or drugs for which Respondent does not possess a valid prescription, for the previous year The Division does not guarantee that any future application by Respondent for licensure will be granted If the Division Director accepts the terms of this Stipulation and Order, Respondent forfeits all rights to practice as a pharmacy technician in the State of Utah Respondent understands that Respondent will not receive any refund of license or renewal fees previously paid to the Division

9 This Stipulation and Order, upon approval by the Director of the Division, shall be the final compromise and settlement of this non-criminal administrative matter Respondent acknowledges that the Director is not required to accept the terms of this Stipulation and Order and that if the Director does not do so, this Stipulation and the representations contained therein

shall be null and void, except that the Division and Respondent waive any claim of bias or prejudgment they might otherwise have with regard to the Director by virtue of the Director having reviewed this Stipulation, and this waiver shall survive such nullification

10 This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties regarding the subject of this Stipulation and Order. There are no verbal agreements that modify, interpret, construe or affect this Stipulation.

11 If Respondent violates any term or condition of this Stipulation and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law.

12 Respondent understands and agrees that if Respondent has been issued an Order by the Division to pay an administrative penalty or a fine, and Respondent has not paid the administrative penalty or fine in full at the time this Stipulation and Order becomes effective, then Respondent may not reapply for licensure in the State of Utah, in any profession or occupation, until Respondent has paid the administrative penalty or fine in full. Respondent understands and agrees that any application for licensure submitted by Respondent shall be denied for the reason of failure to pay an administrative penalty or fine by the Division until Respondent has paid the administrative penalty or fine in full. The Division may also deny the license for any other lawful reason. Respondent understands and agrees that this surrender of Respondent's license(s) does not extinguish any obligation Respondent has to pay any administrative penalty or fine previously ordered by the Division.


13 Respondent understands that the disciplinary action taken by the Division in this


Stipulation and Order may adversely affect any license that Respondent may possess in another state or any application for licensure Respondent may submit in another state

14 Respondent has read each and every paragraph contained in this Stipulation and Order Respondent understands each and every paragraph contained in this Stipulation and Order Respondent has no questions about any paragraph or provision contained in this Stipulation and Order

DIVISION OF OCCUPATIONAL &  
PROFESSIONAL LICENSING

RESPONDENT


BY   
NOEL TAXIN  
Bureau Manager

BY   
BRIAN MARC D'FRANCESCO

DATE 4/25/11

DATE April 12, 2011

MARK L. SHURTLEFF  
ATTORNEY GENERAL

BY   
L. MITCHELL JONES  
Counsel for the Division

DATE 25 Apr 2011

**ORDER**

THE ABOVE STIPULATION, in the matter of **BRIAN MARC DIFRANCESCO**, is hereby approved by the Division of Occupational and Professional Licensing, and constitutes my Findings of Fact and Conclusions of Law in this matter. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2)(a) and (b). The terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case.

DATED this 25 day of April, 2011

DIVISION OF OCCUPATIONAL AND  
PROFESSIONAL LICENSING

  
MARK B STEINAGEL  
Director

Investigator Jared Memmott